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Attorneys for Defendant GOOD SAMARITAN HOSPITAL

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE NORTHERN DISTRICT  
SAN JOSE DIVISION

AMIE NEWMARK, individually and as guardian ad  
litem for CHRISTIAN NEWMARK and ANDREW  
NEWMARK,

Plaintiffs,

v.

GOOD SAMARITAN HOSPITAL, KAISER  
MEDICAL CENTER, SAN JOSE MENTAL  
HEALTH, HEALING TOUCH ACUPUNCTURE,  
MORE PHYSICAL THERAPY, GORDON  
WALKER, M.D., DR. EMEKA NCHEKWUBE,  
DR. ANNU NAVANI, and DOES 1 TO 20,

Defendant.

Case No. 5:10-CV-5032 PVT

ANSWER TO COMPLAINT FOR  
DAMAGES WRONGFUL DEATH  
AND NEGLIGENCE

PURSUANT TO NORTHERN  
DISTRICT LOCAL RULE 3-6(A),  
GOOD SAMARITAN HOSPITAL  
DEMANDS A JURY TRIAL

Defendant, Good Samaritan Hospital, answers the Complaint for Damages Wrongful  
Death and Negligence by Amie Newmark, individually and as Guardian ad Litem for Christian  
Newmark and Andrew Newmark, as follows:

1. Answering paragraph 1 of the Complaint, Defendant is without sufficient  
knowledge or information to form a belief as to the truth of the factual averments contained in  
said paragraph, and on that basis denies each and every averment contained therein. The other  
averments of paragraph 1 call for legal conclusions as to which no reply is required.

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2. Answering paragraph 2 of the Complaint, said paragraph contains conclusions of law and not averments of fact for which a response is required, and on that basis, Defendant denies each and every averment contained therein.

3. Answering paragraph 3 of the Complaint, said paragraph contains conclusions of law and not averments of fact for which a response is required, and on that basis, Defendant denies each and every averment contained therein.

4. Answering paragraph 4 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in said paragraph, and on that basis, denies each and every averment contained therein.

5. Answering paragraph 5 of the Complaint, Defendant denies that Gordon Walker, M.D., Dr. Emeka Nchekwube, or Dr. Annu Navani were the agents and employees of Defendant Good Samaritan Hospital. As to all other averments in said paragraph, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in said paragraph, and on that basis, denies each and every other averment contained therein.

6. Answering paragraph 6 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in said paragraph, and on that basis, denies each and every averment contained therein.

7. Answering paragraph 7 of the Complaint, Defendant denies each and every averment contained therein.

8. Answering paragraph 8 of the Complaint, Defendant denies each and every averment contained therein.

9. Answering paragraph 9 of the Complaint, Defendant denies each and every averment contained therein.

10. Answering paragraph 10 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in said paragraph, and on that basis, denies each and every averment contained therein.

11. Answering paragraph 11 of the Complaint, Defendant denies each and every averment contained therein.

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12. Answering paragraph 12 of the Complaint, Defendant denies each and every averment contained therein.

13. Answering paragraph 13 of the Complaint, Defendant admits that it received the letter addressed to Defendant Good Samaritan Hospital regarding "Notice of Intention to Commence Action Against Health Care Provider" dated February 23, 2010, attached to Plaintiffs' Complaint, shortly after February 23, 2010. As to the other factual averments contained in said paragraph, Defendant is without sufficient knowledge or information to form a belief as to the truth of the additional averments contained in said paragraph, and on that basis, denies each and every additional averment contained therein.

14. Answering paragraph 13 of the Complaint, Defendant incorporates by reference its response to paragraphs 1-12 of the Complaint.

15. Answering paragraph 15 of the Complaint, Defendant denies each and every averment contained therein.

16. Answering paragraph 16 of the Complaint, Defendant denies each and every averment contained therein.

### **AFFIRMATIVE DEFENSES**

As an affirmative defense to the Complaint on file herein, and each claim for relief thereof, Defendant is informed and believes, and on that basis of such information and belief, avers as set forth below:

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint, and each cause of action stated therein, fails to state facts sufficient to constitute a cause of action against this answering Defendant.

#### **SECOND AFFIRMATIVE DEFENSE**

This answering Defendant alleges that said Complaint fails to state a claim against Defendant upon which relief can be granted.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable statutes of limitation including, but not limited to, California Code of Civil Procedure section 340 and/or 340.5.

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiffs and/or Decedent freely and voluntarily assumed the risk of injury and  
3 damage alleged in this action with full knowledge and appreciation of the magnitude  
4 thereof.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 The injuries and damages suffered by Plaintiffs, if any, were proximately caused  
7 in whole or in part by the fault or negligence of Plaintiffs, the Decedent, or others.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 This answering Defendant alleges that at all relevant times herein, it acted  
10 reasonably, in good faith, with proper purpose, and within the standard of care  
11 applicable to this Defendant.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 Plaintiffs and/or Decedent, with the exercise of reasonable diligence and effort,  
14 would have and could have mitigated the damages alleged in the Complaint, if indeed  
15 there are. The resultant damages, if any, complained of in said Complaint were directly  
16 and proximately caused by the failure, neglect and refusal of the Plaintiffs and/or  
17 Decedent to exercise reasonable diligence and effort to mitigate the damages alleged.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 To the extent Plaintiffs suffered any symptoms of mental or emotional distress or  
20 injury, they were the result of a pre-existing psychological disorder or alternative  
21 concurrent cause, and not the result of any act or omission of Defendant.

22 **NINTH AFFIRMATIVE DEFENSE**

23 Defendant alleges that Plaintiffs are barred from relief by virtue of Civil Code  
24 section 1714.8, as there can be no liability in that Plaintiffs' damages, if any, were caused  
25 by the natural course of disease or condition or were the natural or unexpected result of  
26 reasonable treatment rendered for the disease or condition.

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**TENTH AFFIRMATIVE DEFENSE**

In the event Plaintiffs recover a judgment against this Defendant, request is made that any such liability be apportioned under equitable principles with that of any other Defendants similarly held responsible to Plaintiffs.

**ELEVENTH AFFIRMATIVE DEFENSE**

This answering Defendant alleges on information and belief that a certain sum has been or will be paid to Plaintiffs as compensation for the same damages Plaintiffs seek against this answering Defendant and, therefore, said Defendant is entitled to a set-off in said amount against any judgment or recovery Plaintiffs may recover against this answering defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

Defendant reserves the right to introduce evidence of any amounts paid or to be paid as a benefit to plaintiffs in, under and pursuant to Civil Code section 3333.1 and claim the protection of Civil Code section 3333.2.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant reserves the right to request to have future damages, if any, paid in whole or in part, as specified and provided for in Code of Civil Procedure section 667.7.

**FOURTEENTH AFFIRMATIVE DEFENSE**

This answering defendant asserts that its responsibility, if any, and/or liability, if any, as to non-economic damages, if any, shall be limited to the percentage of fault attributable, if any, to this answering Defendant and a separate judgment be so rendered.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusionary terms used in the Complaint. Accordingly, defendant expressly reserves the right to assert additional defenses if and to the extent that such affirmative defenses become applicable.

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WHEREFORE, Defendant prays for the following:

1. Plaintiffs take nothing by way of the Complaint for Damages Wrongful Death and Negligence;
2. Defendant recovers its costs of suit, including attorney's fees herein; and
3. For such other relief as the Court deems proper.

Dated: December 3, 2010

**HARDY ERICH BROWN & WILSON**  
A Professional Law Corporation

By \_\_\_\_\_ /S/

STEPHEN W. ROBERTSON  
STATE BAR NO. 228708

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**PROOF OF SERVICE  
STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

I declare as follows:

I am over 18 years of age and not a party to the within action; my business address is 1000 G Street, Second Floor, Sacramento, California 95814, I am employed in Sacramento County, California.

On December 3, 2010 at Sacramento, California, by use of electronic mail of the following documents: ANSWER TO COMPLAINT FOR DAMAGES, WRONGFUL DEATH AND NEGLIGENCE on the following interested parties in Case No. 5:10-CV-5032 by transmitting electronically to the following:

**Attorney**

**Representing**

Anthony H. Santucci, Esq.  
1459 18th Street, #210  
San Francisco, CA 94107  
Email: thegreat426@sbcglobal.net

Plaintiffs

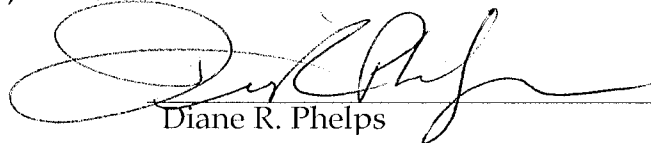
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Def's. Kaiser Foundation  
Hospital and The Permanente  
Medical Group, Inc.

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Def's. United States of America  
and VA San Jose Clinic

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 3, 2010, at Sacramento, California.

  
Diane R. Phelps

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